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C O N F I D E N T I A L GUATEMALA 000134

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TAGS: [KJUS](#) [PINR](#) [SNAR](#) [PGOV](#) [KCRM](#) [PHUM](#) [GT](#)  
SUBJECT: CICIG CONFRONTS ATTORNEY GENERAL AS CORRUPT  
PROSECUTOR IS RELEASED ON BAIL

REF: A. 08 GUATEMALA 1056  
[B. 08 GUATEMALA 441](#)  
[C. 07 GUATEMALA 348](#)

Classified By: Pol/Econ Counselor Drew Blakeney for reasons 1.4 (b&d).

#### Summary

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[1](#)1. (C) On February 3 a judge released former prosecutor Alvaro Matus on \$2000 bail after the UN-led International Commission Against Impunity (CICIG) had raised charges against him for obstructing justice in the murder of Victor Rivera. Matus resigned as the country's Chief Homicide Prosecutor in 2008 after CICIG told President Colom he was part of an organized crime group inside the Attorney General's Office. The Attorney General's Office dropped the two most serious charges against him. The CICIG prosecutor handling the case characterized the decision to drop the most serious charges as a "stab in the back" by the Attorney General's Office. CICIG Commissioner Castresana was harsher, blasting criminal penetration of the state in an explosive radio interview. Attorney General Velasquez at first responded that CICIG's evidence was insufficient to support the more serious charges against Matus, but later agreed to charge Matus with all four crimes and order his arrest. Castresana told the Ambassador February 10 that his public confrontation with AG Velasquez had blown over. Matus will become a fugitive from justice if he does not turn himself in immediately. The Ambassador spoke at length on national radio to support CICIG and to stress the importance of the Matus case. While increasing public sympathy for CICIG, this case also exposed its Achilles' heel -- having to prosecute its cases in the corrupt Guatemalan judiciary. End Summary.

#### Corrupt Chief Homicide Prosecutor Freed

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[1](#)2. (U) On February 3, Seventh Judge of the First Instance Penal Court Adrian Rolando Rodriguez Arana released Alvaro Matus on \$2000 bail. Matus resigned his position as Guatemala's Chief Homicide Prosecutor in 2008 after being informed that his name was on a list CICIG had sent to President Colom of personnel who should be removed from the Attorney General's Office (Public Ministry) for cause (ref a). Specifically, CICIG had found evidence that Matus had removed crime scene evidence and case files during his investigation of the April 2008 murder of senior Ministry of Government Advisor Victor Rivera (ref b). A CICIG prosecutor told Pol/Econ Counselor that there was no doubt that Matus had tried to cover up the Rivera murder, and he had also inappropriately interfered in other sensitive investigations, including that of the February 2007 murders of the three

Salvadoran PARLACEN deputies (ref c). CICIG Commissioner Castresana confirmed this to the Ambassador February 10.

13. (C) In their initial presentation of the case against Matus to the judge, Guatemalan prosecutors excluded the two most serious charges against Matus, conspiracy and interference in a criminal investigation. Their ostensible argument in dropping the charges was that the organized crime law containing the two provisions requires that other defendants must be named as there cannot be a conspiracy of one. The CICIG indictment did not identify a co-conspirator as required by law. Only the charges of abuse of authority and negligence were filed. (Note: A CICIG prosecutor told Pol/Econ Counselor that he believed that the prosecutors had dropped the charges out of a misplaced sense of loyalty to Matus and the institution, but that they had not been bribed.) The Seventh Judge of the First Instance Penal Court -- whom Castresana described to the Ambassador as corrupt -- declined to place Matus under house arrest, and rejected CICIG's request to be a co-plaintiff in the case. Two of Matus' three lawyers were formerly prosecutors who were among those removed for cause from the AG's Office. According to press, a number of AG's Office employees accompanied Matus to the courthouse to show their support for him.

#### CICIG Publicly Blasts AG's Office

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14. (U) CICIG responded furiously. CICIG's lead prosecutor in the case, Yolanda Perez, said the AG's Office's action amounted to "a stab in the back." CICIG Commissioner Castresana went on a popular morning radio show and, in an explosive interview, blasted organized crime's penetration of

the state: "This is a failure of the whole system ... It's absurd to think that one person could cause a 98% impunity rate ... You know -- or don't you know? -- that that there are criminal structures inside the institutions ... All of Guatemala knows it ... The journalists have been doing the prosecutors' work ... If you have a video of the crime scene showing a briefcase inside (Victor) Rivera's car and that disappears from the crime scene ... that there are investigation folders filled with documents and the folders turn up empty, and then a series of planned searches is never executed ... that's not negligent conduct, it's deliberate destruction of material evidence to cover up a murder." Castresana demanded an explanation from Attorney General Velasquez. Public and editorial opinion in response to Castresana's interview was mostly supportive of CICIG. (In response to journalists' subsequent inquiries, President Colom publicly stated that this was a judicial matter, and he would not offer an opinion for fear of unintentionally influencing the case's course.)

15. (U) Attorney General Amilcar Velasquez responded February 5, initially supporting his prosecutors and saying CICIG's evidence was insufficient to support the more serious charges against Matus. However, following further discussions with CICIG, the AG's Office changed course, and on February 11 filed all four charges against Matus. Matus has already failed to sign in with authorities, and is therefore in violation of the terms of his conditional liberty. He is now subject to immediate arrest.

#### Attorney General's Office Polarized

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16. (C) The CICIG prosecutor who supervises the vetted prosecutorial unit at the Attorney General's Office that handles CICIG's cases told Pol/Econ Counselor Feb. 4 that the case had polarized the Attorney General's Office. Many prosecutors who do not belong to the vetted unit were openly confronting at work those who do, he said, and calling them "traitors" and worse. They are concerned CICIG may come after them next, and have closed ranks around Matus. The three vetted Guatemalan prosecutors and their assistants feel frightened and estranged from their colleagues, according to their CICIG supervisor. (Note: NAS frequently vets and polygraphs prosecutors and other AG's Office personnel for

its training programs. The pass rate is less than 10%. End Note.)

¶7. (C) During a meeting with the Ambassador February 10, Castresana described Attorney General Velasquez as "a good man," but said he is not in control of the Public Ministry. He dismissed the AG's initial assertion that CICIG's evidence was inadequate to support all of the charges against Matus, exclaiming "We have 15 documented instances of malfeasance by Matus and two witnesses, both of whom are prosecutors!" Despite his public confrontation with AG Velasquez, Castresana said CICIG and the AG's Office were once again working well together and preparing new charges (which were filed February 11). Castresana said Matus may already have gone into hiding inside Guatemala with the help of former National Civilian Police Deputy Director Henry Lopez.

Ambassador Publicly Supports CICIG  
QAmbassador Publicly Supports CICIG  
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¶8. (C) The Ambassador used several media opportunities to stress our support for CICIG. In a lengthy February 12 national radio interview, he underscored the need to resolve the Matus accusation as an "emblematic case." He urged the Congress to pass CICIG-proposed legislation, and to support reform of the courts and Public Ministry.

Comment  
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¶9. (C) CICIG garnered significant press attention with Castresana's passionate condemnation of criminal penetration of the state. However, this case has exposed what many observers anticipated would be CICIG's Achilles' heel -- it has to prosecute its cases in the fallible Guatemalan judiciary. Castresana's rhetoric touched off a public dispute with his principal Guatemalan counterpart, Attorney General Velasquez. It is critically important that the two institutions continue to cooperate, and it is not yet clear what the impact will be of this "lovers' quarrel," as Castresana terms it. We have made clear, publicly and privately (at the highest levels), USG support for CICIG and for urgent action to address judicial inaction and corruption.  
McFarland